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FM AMEMBASSY JAKARTA

TO RUEHC/SECSTATE WASHDC IMMEDIATE 9949

INFO RUEHZS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS PRIORITY

RUEHGV/USMISSION GENEVA PRIORITY 7818

RUEHBY/AMEMBASSY CANBERRA 2979

RUEHKA/AMEMBASSY DHAKA 1216

RUEHNE/AMEMBASSY NEW DELHI 2175

RUEHKO/AMEMBASSY TOKYO 2441

RUEHWL/AMEMBASSY WELLINGTON 3016

RUEHHK/AMCONSUL HONG KONG 2926

RUEHPT/AMCONSUL PERTH 1090

RHMFIUU/BUMED WASHINGTON DC

RHHJJPI/USPACOM HONOLULU HI

RHHJJPI/PACOM IDHS HONOLULU HI

RUENAAA/SECNAV WASHDC

RUEKJCS/SECDEF WASHDC

RUEAWJB/DEPT OF JUSTICE WASHDC

RULSAAV/NAVMEDRSCHCEN SILVER SPRING MD

RHEHNSC/NSC WASHDC

RUEAIIA/CIA WASHDC

RHEFDIA/DIA WASHINGTON DC

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SENSITIVE

SIPDIS

DEPT FOR P, EAP, EAP/MTS, EAP/MLS, EAP/RSP, G/AIAG, OES/IHA, L, L/DL FOR DICKERSON

USAID FOR ANE/CLEMENTS AND GH/CARROLL

DEPT PASS TO HHS/WSTEIGER/ABHAT/MSTLOUIS AND HHS/NIH

DEPT PASS TO USDA/FAS/OSTA BRANT, ROSENBLUM

DOJ FOR OFL/HOLLIS

DOJ FOR OFL/HERRUP

GENEVA FOR WHO/HOHMAN

NSC FOR E.PHU

SECDEF FOR USDP/ISA/APSA D.WALTON

E.O. 12958: N/A

TAGS: [PGOV](#) [TBIO](#) [KFLU](#) [KLIG](#) [ID](#)

SUBJECT: AVIAN INFLUENZA LAWSUIT AGAINST USG: REQUEST FOR GUIDANCE ON COURT APPEARANCE

REF: A. USDOJ-JAKARTA EMAILS

[¶](#)B. STATE 86555

[¶](#)C. JAKARTA 1504 AND PREVIOUS

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[¶](#)11. (U) This message is Sensitive but Unclassified--Please handle accordingly.

[¶](#)12. (U) This message provides recommendations as requested in REF A and requests Department's guidance by September 10. Please see para 10 for action request.

[¶](#)13. (SBU) SUMMARY: Legal proceedings are scheduled to begin in the Central Jakarta District Court on September 17 in the avian-influenza lawsuit against the USG and the World Health Organization (WHO). Mission recommends that USG appear in court on September 17 via local counsel to request that the suit be dismissed on the grounds of sovereign immunity. A key contact has told us that the Indonesian Department of Foreign Affairs is prepared to support such a request. Mission requests front channel guidance by September 10 and authorization for the Ambassador to grant local counsel the power of attorney. END SUMMARY.

RECOMMENDATION REGARDING APPEARANCE

[¶](#)14. (SBU) On August 13, Mission sent a Diplomatic Note to the Indonesian Department of Foreign Affairs (DEPLU) asserting

sovereign immunity, as instructed by Washington (REF B). Following the assertion of immunity, the Department of Justice (DOJ) requested Mission's recommendation as to whether USG, through locally hired counsel, should appear and offer legal defense, in the event DEPLU is unable to intervene on our behalf.

¶15. (SBU) During an August 27 meeting with the Ambassador, Frans Winarta, the DOJ-hired local counsel, explained that if the USG, or its agent, does not appear at the September 17 proceeding, the court could regard the absence of the defendant as the USG's acknowledgment of the plaintiff's claim and render a default judgment. Winarta recommended that he be authorized to appear at the September 17 proceeding to assert USG sovereign immunity and other grounds for dismissal. In order to assert sovereign immunity at this proceeding, Winarta will require the power of attorney to act on behalf of the USG in an Indonesian court.

¶16. (SBU) The Indonesian courts operate on a "three strikes, you're out" rule under which a court does not issue a default judgment until the defendant has received three summons and failed to appear for all three summons. According to Winarta, the USG would be considered to have received two summons so far: to appear on April 22 and May 13. The September 17 court date would constitute a third strike under Indonesian legal practice. According to Winarta, the validity of the service of those summons might have no bearing on the count, in the court's view.

¶17. (SBU) On September 2, DCM, Poloff and DOJ Resident Legal Advisor (RLA) met with Arif Havas Oegroseno, Director of DEPLU's Office of Political, Legal and Regional Treaties.

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Oegroseno stated that he would send Mission's diplomatic note asserting sovereign immunity to the court and would consider appending "a statement of interest" from DEPLU recognizing USG's immunity. Additionally, he would also have an informal conversation with the court. Oegroseno stressed that the court must conduct a proceeding on September 17 in order to dismiss the case.

¶18. (SBU) Winarta recommends avoiding a default judgment, as such a judgment could be seen as a lack of respect for the Indonesian courts and generate negative publicity toward the United States.

INFORMATION FROM WHO

¶19. (SBU) Embassy officers met with representatives of the World Health Organization (WHO), which is the co-defendant in the suit, in Jakarta on August 27. According to the Jakarta WHO office, no United Nations (UN) agency has ever appeared in court in Indonesia or any other country. WHO's note verbale had requested that DEPLU inform the courts of WHO's immunity. However, WHO had not received any acknowledgment of the note and was not taking any active steps to request DEPLU intervene on WHO's behalf. WHO maintained that it had not been properly served and that it was immune. DEPLU contacts in Oegroseno's office told Embassy officers on September 2 that their office had not received the WHO note asserting immunity.

ACTION REQUEST

¶10. (SBU) Mission recommends that local counsel attend the court proceedings on September 17 and assert the USG's claim of sovereign immunity. Mission also requests authorization for the Ambassador to sign a letter of power of attorney allowing Winarta, as local counsel, to appear in court on behalf of the USG. Finally, Mission requests the Department's guidance as to which specific points to make in its claim of sovereign immunity.

HUME